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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,913	03/08/2004	James M. Brugger	T4342-14198US18	1674

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MCLEAN, VA 22102-3833

EXAMINER	
HAND, MELANIE JO	

ART UNIT	PAPER NUMBER
3761	

NOTIFICATION DATE	DELIVERY MODE
12/18/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/796,913	BRUGGER ET AL.	
	Examiner	Art Unit	
	MELANIE J. HAND	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 October 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-12,16-20 and 22-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6,8-12,16-20,22-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed October 16, 2008 overcomes all outstanding claim rejections under 35 U.S.C. 102 and 35 U.S.C. 103. However, new grounds of rejection are made herein in light of the discovery of an additional valid prior art reference.

Response to Arguments

2. Applicant's arguments with respect to claim 16 have been considered but are moot in view of the new ground(s) of rejection prompted by applicant's amendment to the claims and an additional prior art search conducted.

Allowable Subject Matter

3. The indicated allowability of claims 1-6, 8-12, 18, 23 and 24 is withdrawn in view of the newly discovered reference(s) to U.S. Patent No. 6,595,943 to Burbank. Rejections based on the newly cited reference follow.

Claim Objections

4. Claim 22 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The limitation of claim 22 is already recited in claim 16 from which claim 22 depends.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-6, 8-12, 16-20 and 22-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Burbank ('U.S. Patent No. 6,595,943)

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With respect to **claim 1:** Burbank discloses a blood treatment system 10 comprising a blood treatment machine 16 having a first opposing portion in the form of chassis panel 26 with a first surface and a second opposing portion in the form of panel door 28 with a second surface. The first and second opposing portions 26,28 are spaced apart such that the first surface is parallel to the second surface with a gap formed therebetween in the form of slot 27, said first surface and said second surface being adjacent to the gap 27 and facing each other. (Col. 4, line 56 – Col. 5, line 3) The blood treatment machine 16 has at least one actuator (peristaltic pumps

92,144 and 152) (Fig. 2, Col. 5, lines 21-23, Col. 10, lines 6-15) and at least one sensor as part of blood handling unit 36 disposed on at least said first opposing portion 26. (Col. 5, lines 21-24) A support in the form of rails 31 is attached to said blood treatment machine 16. (Col. 4, lines 56-59) The system comprises a cartridge panel in the form of fluid processing cartridge 18 that holds a fluid circuit 56. The fluid circuit 56 has at least one portion in the form of arterial blood supply path 62 and venous return path 64 to be aligned with said at least one actuator and at least another portion in the form of sensing stations to be aligned with said at least one sensor prior to engagement therebetween. (Col. 7, lines 35-44) The support 31 is configured to permit said cartridge panel 18 to be rested thereupon when said cartridge panel is inserted in said gap 27. (Col. 4, lines 65-67) The support 31 and said cartridge panel 18 are configured such that said fluid circuit at least one and at least another portions are aligned respectively with said at least one actuator and said at least one sensor. The blood treatment machine first and second opposing portions 26,28 being movable with respect to each other via movement along rails 31 to close around said cartridge panel 18 to cause said at least one actuator to engage said at least one portion and said at least one sensor to engage said at least another portion, said first and second surfaces remaining parallel to one another during movement of the first and second opposing portions 26,28. (Fig. 2)

With respect to **claim 2:** The at least one actuator includes multiple peristaltic pumps, specifically blood pump 92 and waste pump 152. (Fig. 2, Col. 9, lines 25-28, Col. 12, lines 27-30)

With respect to **claim 3:** The first and second opposing portions 26,28 are connected by rails 31

at the bottom ends thereof and said support includes at least a portion of said rails 31. (Fig. 2, Col. 4, lines 65-67)

With respect to **claim 4:** The first and second opposing portions 26,28 are movable in a single sliding motion toward one another via said rails 31. (Col. 4, line 66 – Col. 5, line 3) The fluid circuit at least one portion includes at least three tube portions 72,138,136 configured to be engaged with peristaltic pumps 92, 152 and 144 respectively (Col. 8, lines 64-66, Col. 9, lines 25-28, Col. 10, lines 12-16), whereby said tube portions 72,138,136 and said peristaltic pumps 92,152,144 are caused to be engaged by a movement of said first and second opposing portions 26,28. Burbank discloses that the at least one actuator includes at least three peristaltic pumps, namely pump 92, pump 152 and ultrafiltration pump 144. (Fig. 2)

With respect to **claim 5:** The cartridge panel 18 includes cutouts 58 in the insert 53 of panel 18 to expose said fluid circuit at least one and said at least another portions 72,74,138 and said sensing stations to said at least one actuator 92,152 and said at least one sensor, respectively. (Col. 7, lines 45-54)

With respect to **claim 6:** The blood treatment machine is configured to substantially equalize a quantity of fluid removed from a patient with a quantity of fluid added to the patient during a blood treatment inasmuch as Burbank discloses that the system 10 has as one of its objectives the maintenance of uremic toxin levels in a patient's blood (Col. 3, lines 58-61), which is accomplished by equalizing a quantity of fluid removed with a quantity of fluid added, thus the system is configured to substantially equalize a quantity of fluid removed from a patient with a quantity of fluid added.

With respect to **claim 8:** At least one actuator disclosed by Burbank includes multiple peristaltic pumps 92,152,144. (Fig. 2, Col. 5, lines 21-23, Col. 10, lines 6-15)

With respect to **claim 9:** The first and second opposing portions 26,28 are connected by rails 31 at the bottom ends thereof and said support includes at least a portion of said rails 31. (Col. 4, lines 56-59)

With respect to **claim 10:** The first and second opposing portions 26,28 are movable in a single motion via rails 31. The fluid circuit at least one portion includes at least three tube portions 72,138,136 configured to be engaged with peristaltic pumps 92 and 152. The at least one actuator includes at least three peristaltic pumps 92,152 and 144. The tube portions 72,138,136 and said peristaltic pumps 92,152,144 are caused to be engaged by a movement of said first and second opposing portions 26,28. (Col. 7, lines 36-44)

With respect to **claim 11:** The cartridge panel 18 includes cutouts 58 in the insert 53 of panel 18 to expose said fluid circuit at least one and said at least another portions 72,138,136 and said sensing stations to said at least one actuator 92,152,144 and said at least one sensor, respectively. (Col. 7, lines 45-54)

With respect to **claim 12:** The blood treatment machine is configured to substantially equalize a quantity of fluid removed from a patient with a quantity of fluid added to the patient during a blood treatment inasmuch as Burbank discloses that the system 10 has as one of its objectives the maintenance of uremic toxin levels in a patient's blood (Col. 3, lines 58-61), which is

accomplished by equalizing a quantity of fluid removed with a quantity of fluid added, thus the system is configured to substantially equalize a quantity of fluid removed from a patient with a quantity of fluid added.

With respect to **claim 16:** Burbank discloses a blood treatment system 10 comprising a blood treatment machine 16 with first and second opposing portions in the form of chassis 26 and chassis door 28, respectively, spaced apart to form a gap in the form of slot 27 therebetween. The blood treatment machine 16 has at least one actuator and at least one sensor disposed on at least the first opposing portion 26. The at least one actuator includes at least one pump, namely blood flow pump 92 and waste pump 152. The system comprises a disposable cartridge panel 18 that supports and holds a fluid circuit 56. The fluid circuit 56 has at least one portion in the form of arterial supply path 62 that is to be aligned with the at least one actuator and at least another portion in the form of sensing stations to be aligned with the at least one sensor prior to engagement therebetween. A support formed by rails 31 is attached to the blood treatment machine 16 and is configured to permit the cartridge panel 18 to be rested thereupon when the cartridge panel 18 is inserted in the gap 27. The support and the cartridge panel are configured such that the fluid circuit at least one and at least another portions are aligned respectively with the at least one actuator and the at least one sensor. (Col. 8, lines 40-47) The blood treatment machine first and second opposing portions 26,28 are movable with respect to each other along rails 31 to close around the cartridge panel 18 to cause the at least one actuator 92,152 to engage the at least one portion and the at least one sensor to engage the at least another portion. (Col. 8, lines 40-47) The second opposing portion 28 carries a user interface panel 44. The first and second opposing portions 26,28 move toward or away from one another along rails 31, i.e. they are slidably interconnected via rails 31. (Col. 4, lines 56-59)

With respect to **claim 17:** The at least one actuator includes at least two pumps 92,152,144. (Col. 5, lines 21-24, Col. 10, lines 11-15)

With respect to **claim 18:** The second opposing portion 28 carries a user interface panel 44. (Col. 6, lines 26-28)

With respect to **claim 19:** The first opposing portion 26 constitutes a major portion of the blood treatment machine 26 and the second opposing portion 28 is movably attached to the first opposing portion. (Fig. 2, Col. 4, lines 56-59)

With respect to **claim 20:** The first and second opposing portions 26,28 have opposing facing surfaces that lie adjacent the cartridge panel 18, which opposing facing surfaces are parallel and remain parallel when closed around the cartridge panel. (Fig. 2)

With respect to **claim 22:** The first and second opposing portions 26,28 move toward or away from one another along rails 31, i.e. they are slidably interconnected via rails 31. (Col. 4, lines 56-59)

With respect to **claim 23:** Burbank discloses a blood treatment system 10 comprising a blood treatment machine 16 having a first opposing portion in the form of chassis panel 26 with a first surface and a second opposing portion in the form of panel door 28 with a second surface. The first and second opposing portions 26,28 are spaced apart such that the first surface is parallel to the second surface with a gap formed therebetween in the form of slot 27, said first surface

and said second surface being adjacent to the gap 27 and facing each other. The blood treatment machine 16 has at least one actuator (clamping devices) and at least one sensor as part of blood handling unit 36 disposed on at least said first opposing portion 26. (Col. 5, lines 21-24) A support in the form of rails 31 is attached to said blood treatment machine 16. The system comprises a cartridge panel in the form of fluid processing cartridge 18 that holds a fluid circuit 56. The fluid circuit 56 has at least one portion in the form of arterial blood supply path 62 and venous return path 64 to be aligned with said at least one actuator and at least another portion in the form of sensing stations to be aligned with said at least one sensor prior to engagement therebetween. The support 31 is configured to permit said cartridge panel 18 to be rested thereupon when said cartridge panel is inserted in said gap 27. The support 31 and said cartridge panel 18 are configured such that said fluid circuit at least one and at least another portions are aligned respectively with said at least one actuator and said at least one sensor. The blood treatment machine first and second opposing portions 26,28 being movable with respect to each other via movement along rails 31 to close around said cartridge panel 18 to cause said at least one actuator to engage said at least one portion and said at least one sensor to engage said at least another portion, said first and second surfaces remaining parallel to one another during movement of the first and second opposing portions 26,28. (Fig. 2) The first and second opposing portions 26,28 are connected by rails 31 at the bottom ends thereof and said support includes at least a portion of said rails 31. (Fig. 2, Col. 4, lines 65-67)

With respect to **claim 24:** The second opposing portion 28 carries a user interface panel 44. (Col. 6, lines 26-28)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772